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ATTORNEY FOR APPELLANT:

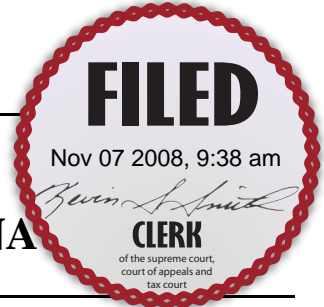
**STEVEN J. HALBERT**

## Carmel, Indiana

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Knox, Indiana



**IN THE  
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: V.B., J.H. III, J.B.,  
and J.H.<sup>1</sup>

JAMES HOPSON, JR.

Appellant-Respondent,

VS.

No. 49A05-0804-JV-207

MARION COUNTY DEPARTMENT OF  
CHILD SERVICES

Appellee-Petitioner,

and

CHILD ADVOCATES, INC.

Appellee-Guardian ad Litem.

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Beth Jansen, Magistrate

The Honorable Marilyn Moores, Judge

Cause Nos. 49D09-0710-JC-39140 - 39142

<sup>1</sup> V.B., whose CHINS adjudication was lower cause number 49D09-0710-JC-39139, is not at issue in this appeal.

**November 7, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Respondent James Hopson Jr. (“Father”) appeals from the juvenile court’s determination that his minor children, J.H. III, J.B., and J.H., are children in need of services (“CHINS”). Father presents a single issue for our review, namely, whether the evidence is sufficient to support the CHINS adjudication. We affirm.

**FACTS AND PROCEDURAL HISTORY**

J.H. III, J.B., and J.H. are the biological children of Lisa Burkette (“Mother”) and Father. J.H. III is mildly mentally handicapped and J.H. is autistic. All three of the children have developmental delays.

On September 11, 2007, Marion County Department of Child Services (“MCDCS”) received a report that Mother was noncompliant with drug screens and had not followed through with her substance abuse evaluation. When MCDCS Family Case Managers Kathrynne Heckman and Susan Jacobs arrived at Mother’s home to investigate the allegations the next day, they found that the home had no food and that Mother appeared to be “high” on something. Appellant’s App. p. 62. Heckman and Jacobs subsequently removed the children from Mother’s home.

On September 13, 2007, Jacobs interviewed Father. Father was unemployed and suffered from high blood pressure and “fluid on the body.” Appellant’s App. p. 62. Father told Jacobs that he had never paid any child support, but that he would periodically take some

food to Mother's home for the children. As of the date of the interview, Father lived with his sister who cared for him. Father told Jacobs that he wanted to care for the children, but if he was unable, his family could care for the children.

On September 14, 2007, MCDCS filed a petition alleging that the children were CHINS. The juvenile court conducted a fact-finding hearing on November 28, 2007, with regard to the allegations pertaining to Father after Mother admitted the allegations as they pertained to her. As of the date of the fact-finding hearing, Father and Mother were residing together with plans of staying together.

On February 26, 2008, the juvenile court issued "Findings of Fact and Conclusions of Law." Appellant's App. pp. 111-20. The juvenile court concluded that the children were CHINS with respect to Father. On March 13, 2008, the juvenile court conducted a dispositional hearing at which the court ordered Father to participate in various services. Father now appeals.

### **DISCUSSION AND DECISION**

Father challenges the sufficiency of the evidence supporting the juvenile court's determination that his children are CHINS. Indiana Code section 31-34-1-1 (2007) provides that a child under the age of eighteen is a CHINS if:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
  - (A) the child is not receiving; and
  - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The MCDCS bears the burden of proving by a preponderance of the evidence that the children are CHINS. Ind. Code § 31-34-12-3 (2007).

It is well-established that when we review a case in which a juvenile court has entered findings of fact and conclusions thereon, we will not set aside the judgment of the juvenile court unless it is clearly erroneous. *Roark v. Roark*, 551 N.E.2d 865, 869 (Ind. Ct. App. 1990). A juvenile court's findings of fact, conclusions thereon, and judgment are considered to be "clearly erroneous" only if a review of the entire record leaves us with a definite and firm conviction that a mistake has been made. *Id.* In our review, we must first consider whether the evidence supports the factual findings. *Perrine v. Marion County Office of Child Servs.*, 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). Second, we consider whether the findings support the judgment. *Id.* In reviewing findings of fact made by the juvenile court, we neither reweigh the evidence nor judge the credibility of witnesses. *Roark*, 551 N.E.2d at 869. Rather, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. *Id.*

On appeal, Father presents no challenge to specific findings of the juvenile court, but rather claims that the evidence, as a whole, is insufficient to support the juvenile court's determination that the children are CHINS. However, we believe that, with respect to Father, the evidence presented at the fact-finding hearing established that the children are CHINS.

The evidence established that Father had never supported the children financially and that he had never provided care for the children without the assistance of the children's Mother. Apparently Father would periodically, when able, take food over to the house, but the

record is devoid of any suggestion that Father spent time with or even saw the children on a regular basis. Father had never paid child support because of his sporadic employment history and his ongoing health problems, including “fluid on the body” and high blood pressure. Tr. p. 23. When the children were removed from Mother’s care, Father was allegedly living with his sister, who provided care for him, but at some point during MCDCS’s involvement with the children Father was also allegedly homeless. This suggests that Father would be unable to provide a stable home for the children. Additionally, at the time of the fact-finding hearing, Father was living with Mother, whose continued drug abuse had been one condition leading to the removal of the children from the home.

Additionally, service provider Denise Powell, who observed Father interacting with the children, testified that:

It’s apparent that [Father] needs parent education in dealing with the children, especially when we talk about issuing discipline. And just engaging in appropriate interaction with them. It’s difficult, or he’s hesitant to issue consequences ... [a]nd basically, just establishing boundaries with the children.

\* \* \*

[Father] doesn’t verbally or physically re-direct the children. He places most of the responsibility in the hands of mother. Whenever a child, for example, we’re in a public place and they’re acting out, and he doesn’t get up to pick the child up and sit them down and say to the child, “Your behavior is not appropriate at this time.” “If you continue to do that, this is what the consequence is gonna be.” If one of the children starts to cry because he or she is upset, he doesn’t offer any nurturing care or support. He basically observes. I mean when they’re playing and things like that, he watches, he smiles. But he’s not physically interacting with the children. He’s just been an observer. He has been invited in the exchange of dialogue to say something to the children and the last time we met, one of the children had said something that were [sic] not appropriate and I was trying to model for him, what to say with the child, but he did not engage.

Tr. pp. 34-36. Powell also testified that Father exhibited no parental relationship with the children, and explained that, in light of the children's developmental delays, she was concerned about Father's ability to parent because of his inappropriate expectations and lack of empathy. Powell additionally recommended that the children be given psychiatric testing.

Furthermore, the record is devoid of any suggestion that Father had a plan for providing for and protecting the children. Although Father expressed a desire to take care of the children, he admitted that due to his lack of permanent employment and medical problems, his family would likely bear the responsibility of caring for the children. Despite Father's claimed desire to provide care for the children, Family Case Managers Jacobs and Heckman believed that coercive intervention was necessary because Father had never exhibited the capability to provide for the children's fiscal, physical, or emotional needs.

After considering the evidence presented at the fact-finding hearing, the juvenile court concluded that the children were CHINS with respect to Father. The juvenile court concluded that the children were endangered in the care of Father because (1) Father was currently living with Mother, who had admitted substance abuse problems, and had no plan to keep the children safe; (2) Father had never supported the children financially and had no plan to do so; and (3) Father had not demonstrated an ability to provide adequate or appropriate supervision and discipline for the children, all of whom have developmental delays. The juvenile court also concluded that the children were victims of neglect. The juvenile court further concluded that the "physical condition of [the children was] seriously impaired or endangered because [Father] has failed to provide them with necessary and proper shelter and supervision due to

his inability and/or unwillingness to care for them,” and that the children “need treatment that will not be provided without the coercive intervention of the Court.” Appellant’s App. p. 119.

After our review of the evidence, we are convinced that the evidence was sufficient to support the juvenile court’s determination that the children are CHINS. Therefore, we affirm the judgment of the juvenile court.

The judgment of the juvenile court is affirmed.

RILEY, J. and BAILEY, J. concur.